

**REMARKS**

This application has been carefully studied and amended in view of the Office Action dated January 9, 2006. Reconsideration of that action is requested in view of the following.

Claim 1 has been rewritten as claim 12 in view of the rejection of claim 1 under 35 USC 101. As now presented claim 12 is a method of using xenon.

Reconsideration is requested of the rejection of claims 7-11 under 35 USC 101 and claim 7 additionally under 35 USC 112. The rejection was based upon those claims being use claims. Examiner Arnold suggested that the claims be defined as process claims. Since claim 12 is now a process claim, namely directed to the method of using xenon, claims 7-11 have been made dependent on claim 12 and are now process claims rather than use claims.

Reconsideration is also requested of the rejection of claim 6 under 35 USC 112. In that rejection Examiner Arnold indicated that the claim merely recited a use. Claim 6, however, is directed to a medicament which comprises both xenon and an NO source. As such, claim 6 is not a use claim and is not a method claim.

Reconsideration is respectfully requested of the rejections of claims 7 and 9-11 under 35 USC 112. Those claims had been rejected because the term "where appropriate" was considered indefinite. The term has now been deleted from claim 7 and the optional use of an NO source previously recited in claim 7 is now recited in claim 14. Additionally, the previous reference in claim 7 to the "gaseous medicament" has been deleted from claim 7 and is now in newly added claim 13. As regards claims 9-11 those claims recite the NO source as a positive step rather than an option. The practice of the invention which does not include the NO source is the subject matter of newly added claims 15-17.

### **FISHMAN REFERENCE**

Reconsideration is respectfully requested of the rejection of claims 1-2 and 9-11 as anticipated by Fishman (U.S. 5,228,434).

The Fishman reference deals with anesthesia wherein a gas is breathed by the patient to achieve the desired effect (Column 1, lines 9, 10).

Moreover, the Fishman reference is directed to a method of anesthetizing a patient by providing a combination consisting of three gases, which are xenon, oxygen and helium, as a medicament for the treatment of a patient i.e. to anesthetize him. (Column 2, lines 16-22).

However, in this reference the only function of xenon is to anesthetize the patient (column 4, lines 18-22). This means that xenon is used to cause unconsciousness.

In the present invention xenon has the function to reduce the tone of smooth muscles present in the gastrointestinal tract in vessels or bronchi. Thus, with the present invention the site and mode of action is quite different from Fishman.

From the above it is clear that the Fishman reference does not disclose the embodiments as defined in the claims of the present invention.

### **PETZELT REFERENCE**

Reconsideration is respectfully requested of the rejection of claims 1, 2, 7 and 10-11 as anticipated by Petzelt, et al. (WO 00/53192).

As regards Petzelt et al. this reference deals with preparations containing xenon for treating neurointoxications and their use in treating neurointoxications (page 4, penultimate and last paragraph, page 5, paragraph 1 claims 1, 7, 16).

Petzelt et al. describes that there is a need for a preparation which reduces or prevents the damaging effects of uncontrolled neurotransmitter release from neurons, e.g. of dopamine, glutamate or noradrenalin (page 4, 2<sup>nd</sup> paragraph).

Further, it is disclosed that xenon suppresses reversibly the release of neurotransmitters, which let to the preparation of means for treating cell damage and diseases, which are caused by an increased neurotransmitter release (page 4, penultimate paragraph).

Petzelt et al. simply does not disclose or suggest the use of xenon in accordance with the present invention.

By the way all Examples 1 and 2 are carried out under in vitro conditions using isolated cells derived from a pheochromocytoma, which is a tumor of the kidney. However, isolated tumor cells of the kidney have no relation to isolated cells of the smooth muscle, let alone to a complete smooth muscle in a physiological and natural environment.

### **BRIEND REFERENCES**

Reconsideration is respectfully requested of the rejection of claims 1-10 as anticipated by Briend, et al. (WO 97/15311) or Briend et al. (US 5,670,177). Both of these references are similar as regards the present invention. In the following discussion where reference is made to the specification, such references with regard to WO 97/15311.

The Briend et al references disclose the use of a combination of nitrogen monoxide (NO) and carbon dioxide (CO<sub>2</sub>) for the treatment of ischaemia.

The term or "ischaemia" or "ischemia" defines a site or an area of the human or animal body where the blood supply or the blood stream is interrupted. This event is not specific as to a site of the human or animal body but can affect all possible sites of the body (page 4, lines 33-35).

Further, it is disclosed that the treatment of an embolism is preferred (page 4, lines 26-31), which is a form of ischaemia and means the vascular obliteration caused by a thrombus or the like (page 5, lines 6,7).

However, as with the other references discussed above, the Briend et al references are also completely silent as to the disclosure of xenon having any effect on the tone of smooth muscles.

Nothing can be taken from Briend et al. that the combination of NO and CO<sub>2</sub>, which may contain at least a third gas selected from the group consisting xenon, krypton, azote protoxide and mixtures thereof, can be used in the treatment of spasms, let alone the use of just xenon for this purpose.

Therefore, Briend et al. cannot anticipate the present claims, nor make these claims obvious.

Since the references do not disclose the invention as described above and since the references do not provide any incentive or motivation to carry out the invention according to the present claims, these claims are neither anticipated by the cited prior art nor are they obvious in view of the cited references.

### **DOUBLE PATENTING**

It is noted that the double patenting rejections are “provisional” rejections in that claims have not been allowed in the copending applications. Upon the allowance of such claims applicants will file an appropriate terminal disclaimer so as to address the double patenting rejections.

In view of the above remarks and amendments this application should be passed to issue.

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